

Despite the first paragraph, the minimum amount of the security must be at least \$1,000,000 in cases where a member who holds a special permit or a solicitor engages in professional activities within a non-profit legal person.

14. The rules governing the conduct of the professional liability insurance decision-making committee's affairs provided for in the regulation made under section 86.3 and paragraph *d* of section 93 of the Professional Code (chapter C-26) apply when the committee is addressing the security provided for in this Division.

DIVISION V FINAL

15. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.

106243

Gouvernement du Québec

O.C. 730-2023, 26 April 2023

Notaries Act
(chapter N-3)

Act to improve access to justice by broadening the range of legal services provided free of charge or at a moderate cost
(2022, chapter 26)

Practice of the notarial profession within a non-profit legal person

Regulation respecting the practice of the notarial profession within a non-profit legal person

WHEREAS, under the first paragraph of section 26.1 of the Notaries Act (chapter N-3), enacted by section 8 of the Act to improve access to justice by broadening the range of legal services provided free of charge or at a moderate cost (2022, chapter 26), the board of directors of the Chambre des notaires du Québec may determine, by regulation, the terms, conditions and restrictions applicable to the practice of the notarial profession within a non-profit legal person, such as one constituted under Part III of the Companies Act (chapter C-38) or the Cooperatives Act (chapter C-67.2);

WHEREAS, under the second paragraph of section 26.1 of the Notaries Act, enacted by section 8 of the Act to improve access to justice by broadening the range of

legal services provided free of charge or at a moderate cost, in the regulation, the board of directors of the Chambre des notaires du Québec must prescribe, among other things and with regard to the carrying on of professional activities within a legal person referred to in the first paragraph of section 26.1, standards of the same nature as those that it must prescribe under paragraphs *g* and *h* of section 93 of the Professional Code (chapter C-26) with regard to the carrying on of professional activities within a joint-stock company;

WHEREAS, in accordance with section 95.3 of the Professional Code and the second paragraph of section 26.3 of the Notaries Act, enacted by section 8 of the Act to improve access to justice by broadening the range of legal services provided free of charge or at a moderate cost, a draft Regulation respecting the practice of the notarial profession within a non-profit legal person was sent to every member of the Chambre des notaires du Québec at least 30 days before its adoption by the board of directors of the Chambre des notaires du Québec on 7 December 2022;

WHEREAS, under section 12 of the Act to improve access to justice by broadening the range of legal services provided free of charge or at a moderate cost, and despite the third paragraph of section 26.1 of the Notaries Act, enacted by section 8 of the Act to improve access to justice by broadening the range of legal services provided free of charge or at a moderate cost, the first by-law or regulation adopted or made by the board of directors of the Chambre des notaires du Québec under section 26.1 must be transmitted, on the recommendation of the Minister of Justice, to the Office des professions du Québec for examination and be submitted, with the recommendation of the Office, to the Government, which may approve it with or without amendment;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), the Regulation respecting the practice of the notarial profession within a non-profit legal person was published as a draft in Part 2 of the *Gazette officielle du Québec* of 4 January 2023 with a notice that it could be examined by the Office then submitted to the Government which may approve it, with or without amendment, on the expiry of 45 days following that publication;

WHEREAS, in accordance with section 12 of the Act to improve access to justice by broadening the range of legal services provided free of charge or at a moderate cost, the Office, on the recommendation of the Minister of Justice on 13 December 2022, examined the draft Regulation on 24 March 2023 then submitted it to the Government with its recommendation;

WHEREAS it is expedient to approve the Regulation with amendments;

IT IS ORDERED, therefore, on the recommendation of the Minister Responsible for Government Administration and Chair of the Conseil du trésor:

THAT the Regulation respecting the practice of the notarial profession within a non-profit legal person, attached to this Order in Council, be approved.

YVES OUELLET

Clerk of the Conseil exécutif

Regulation respecting the practice of the notarial profession within a non-profit legal person

Notaries Act
(chapter N-3, s. 26.1)

Act to improve access to justice by broadening the range of legal services provided free of charge or at a moderate cost
(2022, chapter 26, s. 8)

DIVISION I GENERAL

1. A notary may, subject to the terms, conditions and restrictions determined by this Regulation, carry on professional activities within a non-profit legal person for the purpose of providing legal services free of charge or at a moderate cost, in particular a non-profit legal person constituted under Part III of the Companies Act (chapter C-38), the Cooperatives Act (chapter C-67.2), the Canada Not-for-profit Corporations Act (S.C. 2009, c. 23) or the Canada Cooperatives Act (S.C. 1998, c. 1).

If any term, condition or restriction set out in Division III.1 of Chapter II of the Notaries Act (chapter N-3) or in this Regulation is no longer met, the notary must, within 90 days after becoming aware of the non-compliance or within 90 days after being notified of it by the Order, whichever occurs first, take the necessary measures to comply, failing which the notary may no longer engage in professional activities within the non-profit legal person.

2. The notary must at all times ensure that the non-profit legal person within which the notary engages in professional activities permits the notary to comply with the Notarial Act and the Notaries Act (chapters N-2 and N-3), the Professional Code (chapter C-26) and the regulations made for their application, in particular those pertaining to professional secrecy and the notary's duty to act impartially when acting as a public officer.

3. If a notary is struck off the roll or has had his or her right to engage in professional activities suspended or limited, the notary may not, during the period of the striking off, suspension or limitation, act as a director, officer or representative of the non-profit legal person. The same applies if a member has had his or her permit revoked.

DIVISION II TERMS, CONDITIONS AND RESTRICTIONS

4. A notary may engage in professional activities within a non-profit legal person if

(1) at least one of the directors of the board of directors of the non-profit legal person is a notary or a practising advocate, and that condition is set out in the constituting documents of the legal person; and

(2) the constituting documents of the non-profit legal person stipulate that it is constituted for the purpose of providing, mainly or in part, legal services.

5. To engage in professional activities within a non-profit legal person, the notary must, in the 15 days preceding the date of beginning that engagement, pay the fees set by the Order, and provide it with

(1) the declaration provided for in section 6;

(2) written confirmation by the competent authority attesting that the non-profit legal person is covered by security in compliance with Division III;

(3) an up-to-date copy of the constituting documents of the non-profit legal person issued by the competent authority attesting that the legal person exists;

(4) an up-to-date copy of all the by-laws of the non-profit legal person;

(5) written confirmation by the competent authority attesting that that the non-profit legal person is duly registered in Québec;

(6) written confirmation by the competent authority attesting that that the non-profit legal person is exempt, if applicable, from paying income tax or has registered charity status; and

(7) an undertaking by the non-profit legal person within which the notary engages in professional activities to allow the Order and the committees, persons, council or tribunal mentioned in section 192 of the Professional Code (chapter C-26), in the exercise of their functions, to require any person to produce information or a document mentioned in this section or in section 6, or a true copy thereof.

The notary who ceases to engage in professional activities within the legal person must send the Order a declaration under the notary's oath of office in the 15 days preceding the date of the end of that engagement, and pay the fees prescribed by the Order.

6. The notary must make a declaration under the notary's oath of office on a document established by the Order containing

(1) the notary's name and membership number and an indication whether the notary engages in professional activities exclusively within the non-profit legal person;

(2) the name of the non-profit legal person within which the notary engages in professional activities, the other names it uses in Québec and the Québec business number assigned by the enterprise registrar;

(3) the juridical form of the non-profit legal person and whether it complies with the conditions set out in this Regulation;

(4) the address of the head office of the non-profit legal person and the addresses of its establishments;

(5) the names and residential addresses of the directors, officers and representatives of the non-profit legal person and, if applicable, the professional order or similar organization to which they belong and their membership or permit numbers;

7. Where more than one notary engages in professional activities within the same non-profit legal person, only one declaration may be made by one of those notaries acting in the capacity of respondent for all the notaries.

The respondent's declaration is deemed to be the declaration of each of those notaries, and each notary remains fully responsible for the accuracy of the information provided pursuant to paragraphs 1 and 2 of section 6.

8. To retain the right to engage in professional activities within a non-profit legal person, a notary must

(1) update and provide, before 1 April each year, the declaration provided for in section 6;

(2) promptly notify the Order of any change in the coverage provided for in Division III, as well as any change in the information contained in the declaration provided for in section 6 that might compromise compliance with the conditions set out in section 4.

The requirements provided for in the first paragraph may, if applicable, be carried out by the respondent.

9. In the course of engaging in professional activities within a non-profit legal person, the only sums the notary may hold in trust are advances on fees. The notary must deposit them in a trust account reserved for that sole purpose, of which the notary is the holder or a user, and which meets the requirements of the Regulation made under section 89 of the Professional Code (chapter C-26). The non-profit legal person may not be the holder of the trust account.

DIVISION III SECURITY AGAINST PROFESSIONAL LIABILITY

10. A notary who engages in professional activities within a non-profit legal person must furnish and maintain security to cover professional liability for the non-profit legal person by subscribing to the professional liability insurance fund of the *Chambre des notaires du Québec* for professional liability that the non-profit legal person may incur through the fault of the notary in the practice of the profession.

11. The security under the insurance fund must be at least \$1,000,000 per claim and for all claims filed against the non-profit legal person within a coverage period not exceeding 12 months, regardless of the number of notaries who engage in professional activities within the non-profit legal person.

12. The rules governing the conduct of the professional liability insurance decision-making committee's affairs provided for in a regulation made under section 86.3 and paragraph *d* of section 93 of the Professional Code (chapter C-26) apply when the committee is addressing the security provided for in this Division.

DIVISION IV FINAL

13. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.

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